



**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 04/06/99  
AGENDA ITEM 8  
WORK SESSION ITEM       

**TO:** Mayor and City Council  
**FROM:** City Attorney  
**SUBJECT:** Living Wage Ordinance

**RECOMMENDATION:**

It is recommended that the City Council reintroduce the Living Wage Ordinance with the changes supported by staff.

**BACKGROUND:**

When the Living Wage Ordinance ("Ordinance") was considered and unanimously introduced at the March 23, 1999, City Council meeting, multiple changes and additions were requested by Council. The requested changes included the following: extension of the Ordinance to subcontractors, Social Service Agencies (both profit and non-profit) and City of Hayward employees; a cost of living escalator; five uncompensated leave days per year; and a provision prohibiting retaliation.

In addition to the previously requested changes, it is recommended that the supersession language contained in Section 2-13.070 be simplified and clarified to provide that the Ordinance shall not be superseded by a collective bargaining agreement unless the supersession is specifically agreed to by the parties to such agreement.

Considering the modification to the supersession provisions, it is my recommendation that the Council reintroduce the Ordinance. Once reintroduced, the Ordinance will be returned to you for adoption at your next meeting.

Prepared by:

A handwritten signature in black ink, appearing to read "M. O'Toole", written over a horizontal line.

Michael O'Toole  
City Attorney

Approved by:

A handwritten signature in black ink, appearing to read 'Jesús Armas', written in a cursive style.

Jesús Armas, City Manager

Attachments: Exhibit A - (Living Wage Ordinance)

**DRAFT**

DM 4-1-99

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ADOPTING THE HAYWARD LIVING  
WAGE ORDINANCE AS ARTICLE 13 OF CHAPTER 2 OF  
THE HAYWARD MUNICIPAL CODE**

BE IT ORDAINED by the City Council of the City of Hayward as follows:

**SECTION 1. FINDINGS.** The City Council finds and determines as follows:

- a. The City awards many contracts to private firms which provide services and labor to City government and to the public.
- b. Experience indicates that many City contractors who provide services and labor pay their employees of wages at or slightly above the minimum required by federal and state minimum wage laws.
- c. Payment of inadequate compensation does not provide affected employees with resources sufficient to afford a decent standard of living in Hayward.
- d. The City intends to require contractors to provide a minimum level of compensation that will improve the level of services rendered to and for the City.
- e. Based upon public comment, testimony and studies, the City Council finds that the wage levels set by this ordinance are minimum compensation levels required to afford a decent standard of living in Hayward.

**SECTION 2. ADOPTION OF HAYWARD LIVING WAGE ORDINANCE.** The Hayward Municipal Code is amended by adding a new Article 13 to Chapter 2 entitled the "Hayward Living Wage Ordinance" to read as follows:

**ARTICLE 13**  
**HAYWARD LIVING WAGE ORDINANCE**

- |                         |  |
|-------------------------|--|
| Section 2-13.010        | Title and Definitions.   |
| Section 2-13.020        | Applicability of Hayward Living Wage Ordinance Requirements.                           |
| <b>Section 2-13.021</b> | <b>Subcontracted Work.</b>   |
| Section 2-13.030        | Notifying employees of their potential right to the federal Earned Income Credit.      |
| Section 2-13.040        | Enforcement.   |
| Section 2-13.050        | Administration.  |
| Section 2-13.060        | Coexistence with other available relief for specific deprivations of protected rights. |

Section 2-13.061      **Application to City of Hayward Employees.**  
Section 2-13.070      Supersession by collective bargaining agreement.  
Section 2-13.080      Severability.

**SECTION 2-13.010 TITLE AND DEFINITIONS.** The regulations in this Article may be referred to as the Hayward Living Wage Ordinance (hereafter "Ordinance"). The terms used herein are subject to the following definitions

(a) "City" means the City of Hayward and its employees and officials, including those City employees authorized to award a service contract on the City's behalf.

(b) "City Manager" means the City Manager and his/her delegates and representatives.

(c) "Employee" means any individual employed by a service contractor on or under the authority of any contract for services with the City or proposal for such contract.

(d) "Health Benefits" means the payment of no less than one dollar and twenty-five cents (\$1.25) per hour toward the cost of health and medical care insurance for employees and their dependents.

(e) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(f) "Service Contract" means any contract with the City, including a purchase order, for an expenditure in excess of Twenty-Five Thousand Dollars (\$25,000), for any of the following services:

- (I) Automotive repair and maintenance,
- (ii) Facility and building maintenance,
- (iii) Janitorial and custodial,
- (iv) Landscaping,
- (v) Laundry services,
- (vi) Temporary personnel,
- (vii) Pest control, or
- (viii) Security services.
- (ix) **Social Service Agencies.**

(g) "Service Contractor" shall mean any contractor who seeks or has been awarded a Service Contract subject to this Ordinance. **For the purposes of this Ordinance, the term "Service Contractor" shall include all subcontractors retained by a contractor to perform**

any or all of the functions covered by a Service Contract subject to the herein contained regulations.

(h) "Social Service Agency" shall mean any organization receiving funds from the City as a result of a process involving the Human Services Commission

**SECTION 2-13.020 APPLICABILITY OF HAYWARD LIVING WAGE ORDINANCE REQUIREMENTS.**

(a) Scope. These regulations shall apply to any Service Contract with the City which is executed or extended on or after July 1, 1999, and to any previously executed Service Contract, where the services are first provided to the City after June 30, 1999.

(b) Exemptions. To the maximum extent permitted by law, this Ordinance shall apply to the expenditure of funds entirely within the City's control and to the expenditure of other funds consonant with the laws authorizing such expenditures. The following Service Contracts are exempt from this Ordinance's requirements:

- (1) Contracts subject to federal or state law or regulations which preclude the applicability of this Ordinance's requirements.
- (2) Multi-agency contracts involving programs where the City shares management authority with other jurisdictions, unless all of the signatory jurisdictions have a Living Wage Policy.
- (3) Contracts for provision of service by any other governmental agency.

(c) Living Wage Requirements. Service contractors subject to this Ordinance shall pay their employees a wage of no less than eight dollars (\$8.00) per hour, if health benefits are paid to the employees, or nine dollars and twenty-five cents (\$9.25) per hour if no such health benefits are paid.

The hourly rates contained in this section shall be upwardly adjusted each July 1 to reflect the change in the Bay Area Consumer Price Index for the twelve-month period preceding April 1. Prior to June 15th of each year, the individual assigned to administer this ordinance shall calculate, circulate to all "Service Contractors" and post the hourly rate in effect for the next fiscal year.

(d) Compensated and Uncompensated Days Off. Service Contractors subject to the provisions of this Ordinance shall provide a minimum of twelve (12) compensated days off per year and an additional minimum of five (5) uncompensated

days off per year for sick leave, vacation or personal necessity at the employee's request. Full time employees shall accrue compensated days off at the rate of one day per month. Part time employees shall accrue such days at a rate proportional to full time employees.

#### **SECTION 2-13.021 SUBCONTRACTED WORK .**

Service Contractors shall assure that all subcontracts entered into for the performance of work covered by this Ordinance shall contain a provision requiring the subcontractor(s) to comply with requirements of this Ordinance.

#### **SECTION 2-13.030 NOTIFYING EMPLOYEES OF THEIR POTENTIAL RIGHT TO THE FEDERAL EARNED INCOME CREDIT.**

Any contractor who executes a Service Contract with the City shall inform employees making less than twelve dollars (\$12) per hour of their possible right to the federal Earned Income Credit ("EIC") under § 32 of the Internal Revenue Code of 1954, 26 U.S.C. § 32, and shall make available to employees information about the EIC and forms required to secure advance EIC payments.

#### **SECTION 2-13.040 ENFORCEMENT**

(a) **Private Right of Action.** An employee claiming violation of this Ordinance shall have the right to file an action against an employer in the appropriate court, within one year after discovery of the alleged violation. The court may award any employee who files suit pursuant to this provision, as to the relevant period of time, the following:

(I) For failure to pay the minimum wage required by this Ordinance, the difference between the minimum wage required herein and the amount actually paid to the employee.

(ii) For failure to pay medical benefits, the difference between the minimum wage required by this Ordinance with benefits and the amount actually paid to the employee.

(iii) For retaliation for exercise of any rights provided for under this Ordinance, reinstatement, back pay, and/or any other relief that a court may deem appropriate.

(iv) The court shall award reasonable attorney's fees and costs to an employee who prevails in any such private action.

(b) **Service Contract Requirements.** Each Service Contract to which these regulations apply, shall provide that violation of this Ordinance shall enable any aggrieved

employee to file an action against the Service Contractor for damage. In addition, such Service Contract shall also indicate that the City has the discretion to terminate the Service Contract and pursue any other legal remedies available to the City if the Service Contractor fails to comply with this Ordinance.

(d) Retaliation Prohibited. Service Contracts shall expressly prohibit a service contractor from any retaliation against an employee who alleges non-compliance with this Ordinance. Any such employee may report such alleged retaliation to the Purchasing Manager or to the Finance Director, who shall investigate such claim and report the results to the City Manager.

(e) City Enforcement. The City may, in its sole discretion, investigate and address any alleged violation of this Ordinance's requirements. However, the City's failure to investigate an alleged violation or otherwise enforce any of the provisions of this Ordinance shall not create any right of action or right to recover damages from the City by any person, including but not limited to an aggrieved employee.

(f) Violation Chargeable as an Infraction. In addition to the payment of damages, any person violating the requirement of this Ordinance shall be guilty of an infraction and shall be subject to the payment of a fine, not to exceed the limits set forth in Government Code section 36900. However, violation of this Ordinance shall not be prosecuted as a misdemeanor, notwithstanding any other provision of the Hayward Municipal Code.

#### SECTION 2-13.050 ADMINISTRATION

(a) Compliance. The City Manager is authorized to develop and implement administrative policies which carry out the intent of this Ordinance. The City Manager shall also have the discretion to monitor compliance, which may include, but is not limited to, the periodic review of appropriate records maintained by service contractors to verify compliance, and investigation of claimed violations.

(b) Report to City Council. Following the first year after this Ordinance takes effect, the City Manager shall submit a report to the City Council specifically addressing the following matters:

- (I) The extent to which the benefits required by this Ordinance are accruing to Hayward residents,
- (ii) The extent to which service contractors are complying with this Ordinance,
- (iii) The manner in which this Ordinance is affecting the workforce composition of service contractors,

(iv) The manner in which this Ordinance is affecting productivity and service quality of service contractors, and

(v) The manner in which the additional labor costs required by this Ordinance have been distributed among employers, employees and the City.

The aforementioned report shall be submitted to the City Council by October 1, 2000, and subsequent reports shall be submitted as frequently as the City Council deems appropriate.

**SECTION 2-13.060 COEXISTENCE WITH OTHER AVAILABLE RELIEF FOR SPECIFIC DEPRIVATIONS OF PROTECTED RIGHTS.**

This Ordinance shall not be construed to limit an employee's right to bring legal action for violation of other minimum compensation laws.

**SECTION 2-13.061 APPLICATION TO CITY OF HAYWARD EMPLOYEES.**

The provisions of this Ordinance shall apply to employees of the City of Hayward.

**SECTION 2-13.070 SUPERSESSION BY COLLECTIVE BARGAINING AGREEMENT.**

The provisions of this Ordinance shall not be superseded by any collective bargaining agreement unless the supersession is specifically agreed to by the parties to the collective bargaining agreement.

**SECTION 2-13.080 SEVERABILITY.** If any provision of this Article is declared legally invalid by a final judgment rendered a court of competent jurisdiction, the provision declared invalid shall be deemed to be severable to the extent that the remaining provisions of this Ordinance can be enforced in a manner which substantially carries out the objectives of this Ordinance.

**SECTION 3. EFFECTIVE DATE** In accordance with section 720 of the Hayward City Charter, this ordinance shall take effect thirty days after its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_\_, 1999, by Council Member\_\_\_\_\_.



ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_\_  
\_ day of \_\_\_\_\_, 1999, by the following votes of members of said  
City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

\_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward